

copyright in the Stock Footage, which was granted on November 18, 2004 ("Second Preliminary Injunction"). PIP's appeal of the Second Preliminary Injunction was unsuccessful; the Ninth Circuit affirmed on July 11, 2005.

14. On or about February 28, 2007, the Court entered a Permanent Injunction against PIP's marketing and distribution of the Program and dismissed the Underlying Action with prejudice, pursuant to the parties' stipulation.

15. On April 26, 2006, all of PIP's assets, including all existing claims and causes of action, were purchased at a foreclosure auction by Florence Pugliese.

16. On April 26, 2006, Florence Pugliese assigned and transferred the PIP Assets to PASSPORT.

17. As of April 26, 2006, all of the claims and causes of action asserted in this Complaint had accrued.

18. By virtue of the Florence Pugliese foreclosure purchase and assignment, PASSPORT is the successor in interest to all of the claims and causes of actions asserted against HISTORIC in this Complaint.

**FIRST CLAIM FOR RELIEF**  
(Breach of Written Contract)

19. PASSPORT hereby realleges and incorporates by reference paragraphs 1 through 18, inclusive, as though fully set forth herein.

20. Pursuant to the Agreement and the Rider, HISTORIC represented and warranted that it had the rights in the Stock Footage which it had licensed to PIP, and that those rights specifically included the "underlying visual images and audio sound recordings (including live musical performances) incorporated into the Stock Footage" (the "Rights").

21. PASSPORT is informed and believes, and thereupon alleges, that HISTORIC did not own the Rights when it licensed them to PIP. Accordingly, HISTORIC is in breach of the Agreement.

22. PIP performed all of its obligations under the Agreement, except to the extent said performance has been excused, frustrated or made impossible by HISTORIC's wrongful conduct.

23. As a direct and proximate result of Defendant's aforesaid breach of the Agreement, PIP suffered both direct and consequential damages, was forced to incur substantial legal fees and costs in the Underlying Action and suffered significant losses due to its inability to market and distribute the Program. Accordingly, PASSPORT has been damaged in an amount which will be established according to proof at trial, but in no event less than \$1,000,000, plus interest at the maximum rate permissible by law.

**SECOND CLAIM FOR RELIEF**  
(Express Indemnity)

24. PASSPORT hereby realleges and incorporates by reference paragraphs 1 through 23, inclusive, as though fully set forth herein.

25. Pursuant to the Agreement, HISTORIC agreed to indemnify and hold harmless PIP for any third-party claims "of unauthorized use of any rights arising from exploitation of the Stock Footage" ("Claims"). The Underlying Action represents such

Claims. However, although PIP notified HISTORIC of the Claims, HISTORIC has expressly rejected PIP's contention that said claims constitute a breach of HISTORIC's representations and warranties to PIP under the Agreement.

26. PIP was forced to incur substantial legal fees and costs in the Underlying Action and suffered significant losses due to its inability to market and distribute the Program. Accordingly, PASSPORT is entitled to be expressly indemnified by HISTORIC for the ALL damages PIP suffered, in an amount to be proved at trial, but in no event less than \$1,000,000, plus interest at the maximum rate permissible by law.

**THIRD CLAIM FOR RELIEF**  
(Implied Indemnity)

27. PASSPORT hereby realleges and incorporates by reference paragraphs 1 through 26, inclusive, as though fully set forth herein.

28. PASSPORT has been damaged as described herein above based on HISTORIC's breach of the Agreement. If, for whatever, reason, it is determined that HISTORIC does not have an express contractual obligation to indemnify and hold harmless PASSPORT from all damages arising from the Claims asserted in the Underlying Action due to HISTORIC's breach of its representations and warranties with respect to the Stock Footage, then HISTORIC nevertheless has an implied obligation to indemnify PASSPORT therefore.

29. PIP was forced to incur substantial legal fees and costs in the Underlying Action and suffered significant losses due to its inability to market and distribute the Program. Accordingly, PASSPORT is entitled to be impliedly indemnified by HISTORIC for ALL damages PIP suffered, in an amount to be proved at trial, but in no event less than \$1,000,000, plus interest at the maximum rate permissible by law.

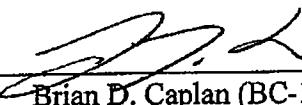
WHEREFORE, PASSPORT prays for relief as follows:

ON THE FIRST, SECOND AND THIRD CLAIMS FOR RELIEF:

1. Damages according to proof, but no less than \$1,000,000;
2. Interest at the maximum rate permissible by law.
3. PASSPORT's attorney's fees and costs of suit herein;
4. For such other relief as the Court deems just and proper.

DATED: October 31, 2007

Respectfully Submitted,  
CAPLAN & ROSS, LLP

By: 

Brian D. Caplan (BC-1713)  
Jonathan J. Ross (JR-0581)  
100 Park Avenue  
New York, NY 10017  
Telephone: (212) 973-2376  
Fax: (212) 661-4290

-and-

Michael R. Blaha, Esq.  
(*pro hac vice* Application Pending)  
Law Offices of Michael R. Blaha  
2530 Wilshire Boulevard, Third Floor  
Santa Monica, California 90403  
Telephone: (310) 828-4847  
Fax: (310) 828-4153

Attorneys for Plaintiff,  
Passport International Entertainment, LLC

# Exhibit A



211 THIRD STREET, GREENPORT, NEW YORK 11944

**STOCK FOOTAGE LICENSE AGREEMENT**

DATE:

JUNE 26, 2003

JOB #: 11948K

LICENSOR:

**HISTORIC FILMS ARCHIVE, LLC**

ADDRESS:

211 THIRD STREET

GREENPORT, NEW YORK 11944

LICENSEE:

**PASSPORT PRODUCTIONS**

ADDRESS:

10520 MAGNOLIA BOULEVARD

NORTH HOLLYWOOD, CALIFORNIA 91601

**1. STOCK FOOTAGE INVOLVED** (hereinafter the "Stock Footage"):  
**KISS PERFORMANCE FOOTAGE**

**2. PRODUCTION IN WHICH STOCK FOOTAGE TO BE USED** (hereinafter the "Production"): **THE KISS VAULT**

**3. PERMITTED USAGE OF STOCK FOOTAGE:**

A. Number of uses permitted: **UNLIMITED**

B. Total length of permitted usage: **UP TO 7 SONGS**

C. Media in which use permitted: **ALL HOME VIDEO**

D. Terms for which use permitted: **IN PERPETUITY**

E. Territories in which use permitted: **WORLDWIDE**

F. Other limitations on permitted uses: **NONE**

**4. LICENSE FEE:** Licensee shall pay to Licensor a fee in the sum of **\$20,000.00** which shall become due and payable within thirty (30) days of the date of this Agreement, and further agrees that 100% of said fee shall in all events be payable to Licensor as a cancellation fee whether or not Licensee uses the Stock Footage as contemplated herein in order to compensate Licensor for costs of compiling, copying, researching, etc.

**HISTORIC FILMS ARCHIVE, LLC**

631-477-9700 ■ fax: 631-477-9800 ■ [www.historicfilms.com](http://www.historicfilms.com) ■ [info@historicfilms.com](mailto:info@historicfilms.com)

Exhibit A

Page 13

**5. LICENSE GRANTED:** In consideration of payment of the license fee, Lessor hereby grants to Licensee, without warranty except as expressly stated herein, a limited, non-exclusive, non-transferable license to use the Stock Footage, subject to the terms and conditions specified herein, and as follows:

A. Licensee hereby expressly agrees that the Stock Footage shall be used only for the permitted purposes as set forth in paragraphs 2 and 3, above, and for no other purpose;

B. Licensee shall not permit the Stock Footage to be made available to or to be used by any other party not expressly contemplated herein at any time or in any manner other than as provided for in this Agreement;

C. Licensee shall accord Lessor a prominent courtesy credit for the use of the Stock Footage on the title cards of the Production in a manner equal in all respects to any other courtesy credits which licensee may accord to others in the Production;

D. Licensee agrees, at its sole expense, to promptly return to Lessor all pre-print material, negatives, dupes, fine grain masters, video tape masters, and all other production or physical materials containing the Stock Footage after the completion of editing of the Production;

E. Licensee shall, at its sole expense, provide to Lessor a VHS or DVD of the completed final version of the Production before Licensee releases the Production for broadcast;

F. Licensee agrees to pay all laboratory, duplication, transportation and other related costs which may be involved in producing and delivering the Stock Footage, and further agrees to return the original Stock Footage to Lessor within ninety (90) days of the date of this Agreement.

G. Lessor agrees to withhold its own home video release of the entire program the Footage is being excerpted from, as well as the sublicensing of the entire program to third parties for home video release (Historic Films reel number ME- 130) for one (1) year beginning with the date of this Agreement. This does not include Lessor's ability to license to third parties clips or excerpts taken from ME-130 (the Footage).

**6. LIMITED LICENSE:** With respect to the License granted hereunder, it is expressly understood and acknowledged by Licensee that:

A. Any rights, title or interest which the Lessor maintains with respect to the Stock Footage are expressly reserved by Lessor, subject only to the limited rights under the license as granted hereunder;

B. Licensor warrants only that it has the right to grant this License with respect to the copyright of the Stock Footage and agrees to indemnify and to hold Licensee harmless only to the extent of any third-party claims for infringement of any motion picture copyright or any other claims of unauthorized use of any rights arising from exploitation of the motion picture footage as expressly authorized herein. In the event that such claims are made against Licensee, Licensee must immediately notify Licenser in writing regarding the details of such claims, and permit Licenser, at its sole option and discretion, to assume the responsibility for control and the defense of any litigation, including but not limited to all aspects of settlement, compromise, etc.

**7. LICENSEE'S ACKNOWLEDGMENTS AND INDEMNIFICATION:** Licensee expressly represents and acknowledges that:

A. Licensee's contemplated use of the Stock Footage may require other consents, clearances, releases or licenses from parties other than Licenser, and Licensee hereby agrees to be solely responsible for obtaining all such necessary consents, clearances, releases or licenses and for making all payments required thereunder to any union, guild, actor, writer, composer, musician, producer, director or any other person or entity whose performances have been recorded in or who have performed services in connection with the Stock Footage;

B. Licensee is solely responsible for the matters set forth in subparagraph 7(A), above, and hereby agrees to indemnify and to hold Licenser (and its agents, employees, representatives, affiliates, parent and subsidiary corporations, each and all of them) harmless against any and all actions, claims, costs (including reasonable attorneys' fees), damages, demands and expenses brought against, suffered or incurred by Licensee as the result of any breach or non-observance of any of the obligations set forth in subparagraph 7(A), above;

C. The terms of the indemnification set forth in subparagraph 7(B) above, shall apply to all loss, cost, damage, liability or expense of any kind arising from claims of defamation, commercial disparagement or other actionable wrong committed by Licensee in connection with the Production.

**8. LICENSE TERMINATION:** Upon the expiration of the license period set forth in paragraph 3 above, or upon termination of this Agreement for whatever cause, all of Licensee's rights and entitlements granted hereunder shall immediately cease and the license granted hereunder shall immediately revert to Licenser. The termination of this Agreement for whatever cause shall not cancel or release any indebtedness of the Licensee to the Licenser.

**9. MISCELLANEOUS:**

A. Nothing in this Agreement or in the license conveyed hereunder shall be deemed to constitute a partnership or joint venture between the parties, and neither party

shall do or permit any act to be done whereby it may be represented as agent or partner of the other;

B. This Agreement is personal to and for the sole benefit of the Licensee and the Licensee shall not be entitled to assign, transfer, license, sell or dispose in any way of any of its rights, interests or obligations under this Agreement to any third party;

C. No waiver (whether express or implied) by Licenser of any breach by the Licensee of any of its obligations hereunder shall be deemed to constitute a waiver or consent to any subsequent or continuing breach by the Licensee of any such obligations;

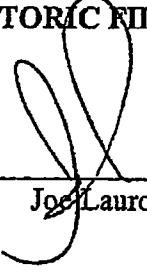
D. In the event that Licensee fails to make timely payment of any fee or costs payable to Licenser, Licenser shall have the right without prejudice to any other right or remedy to charge Licensee from the date that payment fell due until payment is paid in full, interest on the outstanding indebtedness to be calculated at the rate of four (4%) per cent per annum above the base rate as stated by Citibank, N.A. for the applicable time compounded at monthly intervals;

E. Licensee expressly acknowledges that its failure to comply with any of the terms and conditions of this Agreement will render this Agreement and the license conveyed thereunder null and void ab initio, and that a breach by Licensee of any of its representations, warranties or undertakings herein will cause Licenser irreparable damage which cannot readily be remedied in monetary damages in an action at law and may, in addition thereto, constitute an infringement of copyright, thereby entitling Licenser to all equitable remedies, costs and attorneys' fees;

F. This Agreement shall be interpreted in accordance with the laws of the State of New York and will be subject to the exclusive jurisdiction of the courts, state and federal, located within the State of New York to which the parties hereby submit in relation to any dispute arising hereunder;

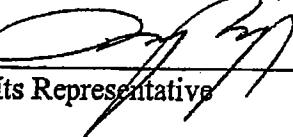
G. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and any amendments, changes or modifications shall have legal effect and be binding only if made in writing and signed by both parties.

HISTORIC FILMS ARCHIVE, LLC.

By:   
Joe Lauro, President

7-22-03  
Date

PASSPORT PRODUCTIONS

By:   
Its Representative

7/25/03  
Date

# Exhibit B

PASSPORT PRODUCTIONS

## facsimile transmittal

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**To:** Kevin **Fax:** 631-477-9800

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**From:** Anthony Mercaldi **Date:** 8/13/2003

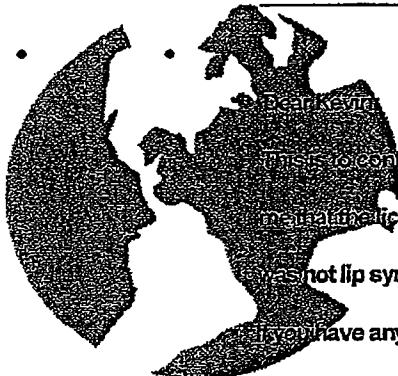
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**Re:** Kiss Performance Footage License **Pages:** 1

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**CC:**

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 **Urgent**  **For Review**  **Please Comment**  **Please Reply**  **Please Recycle**

I am writing to confirm our conversation of earlier today concerning the Kiss License wherein you advised me that the license includes the live audio recording of the performance (as long as the performance was hot lip synched.)

If you have any questions, please feel free to contact me at 818-760-1500

Thanks for your help.

Anthony Mercaldi

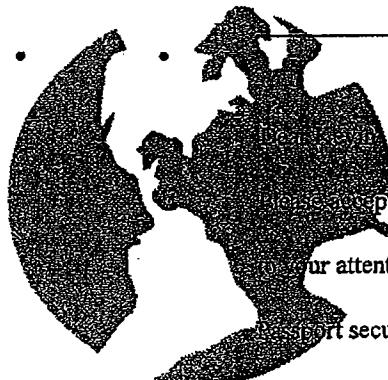
# Exhibit C

Anthony Mercaldi  
 Passport International Productions  
 10520 Magnolia Blvd.  
 North Hollywood, CA  
 818-613-3035

**Facsimile transmission**

**To:** Kevin **Fax:** 631-477-9800  
**From:** Anthony Mercaldi **Date:** 9/4/2003  
**Re:** Kiss Performance Footage License **Pages:** 9  
**CC:** Danny Pugliese, Herb Dorfman, and Howard Balsam

Urgent  For Review  Please Comment  Please Reply  Please Recycle

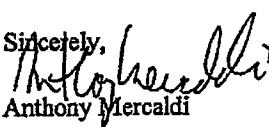


I am sending this fax as a follow-up to our telephone conference of 8/13/03 and my confirmation fax to you on 8/14/03. I am enclosing a copy of the license agreement for your attention of the same date. As you may recall, I contacted you to verify that the license agreement was in fact a license from Historic Films to Passport secured from Historic Films concerning the Kiss Performance Footage (to follow for your review) included the underlying rights in the live performance itself, including all musical sound recordings (not including music composition rights.) This afternoon, we received a fax from our distributor advising us that they do not believe that the license from Historic actually conveys these rights to Passport (correspondence to follow for your review.)

Please contact me at your earliest convenience to discuss this matter in greater detail. If Historic Films is in possession of any documents that we may provide to our distributor to assure them that Passport has the performance rights incorporated in the audio-visual work (the footage), please provide me with copies at your earliest convenience. Passport is operating under a strict deadline

for its Kiss DVD, and relied on the assurances of Historic Films that it possessed the rights  
Historic Films represented that it licensed.

I can be reached at 818-760-1500. Please get back to me at your earliest convenience to clarify  
this matter.

Sincerely,  
  
Anthony Mercaldi

# Exhibit D

11:57p  
03 16:51HISTORIC FILMS  
8197601532

631 77 9800

P-1

PASSPORT INT'L PRO

PAGE 06/06

## Rider to "Stock Footage License Agreement"

Licensor acknowledges that the Stock Footage includes the underlying visual images and audio sound recordings (including the live musical performances) incorporated into the Stock Footage, excluding any pre-recorded music or vocals that may have been synched or lip-synched into the live performance, and that Licensor warrants that it has the right to grant a license with respect to the copyright in the Stock Footage as herein further defined. Licensee acknowledges that this grant does not extend to any copyrights in the music compositions of the underlying songs, and that Licensee has the responsibility to obtain any and all synchronization and videogram licenses from the copyright holders of the music composition rights at licensee's own expense.

The above provision is not intended in any way to modify, alter, or change any terms or obligations in the Agreement, but rather to clarify the terms and to more accurately reflect the understanding of Passport and Historic Films.

Dated: September 8, 2003

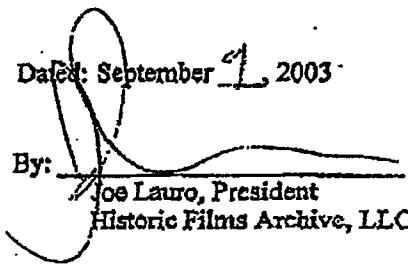
By:



Jeanette Pogliese, VP  
Passport International Productions

Dated: September 1, 2003

By:



Joe Lauro, President  
Historic Films Archive, LLC

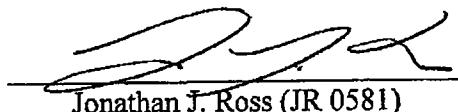
Post-it® Fax Note	7671	Date	9/9/03	# of pages	1
To	Anthony Moretti	From	Karen Rice		
Co/Dept.		Co.			
Phone #		Phone #	631 447 9400		
Fax #	818 7601532	Fax #	9600		

**CERTIFICATE OF SERVICE**

I, Jonathan J. Ross, hereby certify that on October 31, 2007, I caused to be served a true and correct copy of the within First Amended Complaint by ECF filing and First Class Mail upon the following:

David M. Levy  
Levy & Boonshaft, P.C.  
477 Madison Avenue, 14<sup>th</sup> Floor  
New York, New York 10022  
Attorneys for Defendant  
Historic Films Archive, LLC

Dated: October 31, 2007  
New York, New York



\_\_\_\_\_  
Jonathan J. Ross (JR 0581)

ECF

## U.S. District Court

United States District Court for the Southern District of New York (Foley Square)  
CIVIL DOCKET FOR CASE #: 1:07-cv-08194-VM

Passport International Entertainment, LLC v. Historic Films Date Filed: 09/19/2007  
 Archive, LLC  
 Assigned to: Judge Victor Marrero  
 Demand: \$1,000,000  
 Cause: 28:1332 Diversity-Breach of Contract

Jury Demand: None  
 Nature of Suit: 190 Contract: Other  
 Jurisdiction: Federal Question

**Plaintiff**

**Passport International  
 Entertainment, LLC**  
*a California Limited Liability Company*

represented by **Brian D. Caplan**  
 Caplan & Ross, LLP  
 100 Park Avenue  
 18th Floor  
 New York, NY 10017  
 (212) 973-2376  
 Fax: (212) 661-4290  
 Email: [bcaplan@caplanross.com](mailto:bcaplan@caplanross.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Michael R. Blaha**  
 Caplan & Ross, LLP  
 2350 Wilshire Boulevard  
 Third Floor  
 Santa Monica, CA 90403-4642  
 (212) 973-2376

V.

**Defendant**

**Historic Films Archive, LLC**  
*a New York Limited Liability Company*

represented by **David M. Levy**  
 Levy & Boonshaft, P.C.  
 477 Madison Avenue  
 NY, NY 10022  
 (212) 751-1414  
 Fax: (212) 751-6943  
 Email: [dlevy@levyboonshaft.com](mailto:dlevy@levyboonshaft.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
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09/19/2007	<u>1</u>	COMPLAINT against Historic Films Archive, LLC. (Filing Fee \$ 350.00, Receipt Number 627398) Document filed by Passport International Entertainment, LLC. (jeh) Additional attachment(s) added on 9/24/2007 (Becerra, Maribel). (Entered: 09/20/2007)
09/19/2007		SUMMONS ISSUED as to Historic Films Archive, LLC. (jeh) (Entered: 09/20/2007)
09/19/2007		Case Designated ECF. (jeh) (Entered: 09/20/2007)
09/19/2007		Magistrate Judge Debra C. Freeman is so designated. (jeh) (Entered: 09/20/2007)
09/19/2007	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Passport International Entertainment, LLC. (jeh) Additional attachment(s) added on 9/24/2007 (Becerra, Maribel). (Entered: 09/20/2007)
09/28/2007	<u>3</u>	AFFIDAVIT OF SERVICE. Historic Films Archive, LLC served on 9/25/2007, answer due 10/15/2007. Service was accepted by Joel Lauro, President. Document filed by Passport International Entertainment, LLC. (Caplan, Brian) (Entered: 09/28/2007)
10/16/2007	<u>4</u>	STIPULATION AND ORDER that defendant's time to answer, move or otherwise respond with respect to the summons and complaint in this action is hereby extended through and including 11/15/07, and it is further stipulated and agreed that defendant hereby waives any challenge to the Court's jurisdiction or as to the SDNY being the proper venue. (Signed by Judge Victor Marrero on 10/16/07) (dle) (Entered: 10/16/2007)
10/18/2007	<u>5</u>	NOTICE OF APPEARANCE by David M. Levy on behalf of Historic Films Archive, LLC (Levy, David) (Entered: 10/18/2007)
11/01/2007	<u>6</u>	AMENDED COMPLAINT amending <u>1</u> Complaint against Historic Films Archive, LLC. Document filed by Passport International Entertainment, LLC. Related document: <u>1</u> Complaint filed by Passport International Entertainment, LLC. (jco) Additional attachment(s) added on 11/8/2007 (Correa, Julie). (Entered: 11/05/2007)
11/01/2007		***NOTE TO ATTORNEY TO E-MAIL PDF. Note to Attorney Brian D. Caplan for noncompliance with Section (3) of the S.D.N.Y. 3rd Amended Instructions For Filing An Electronic Case or Appeal and Section 1(d) of the S.D.N.Y. Procedures For Electronic Case Filing. E-MAIL the PDF for Document <u>6</u> Amended Complaint to: case_openings@nysd.uscourts.gov. (jco) (Entered: 11/05/2007)
11/01/2007	<u>7</u>	MOTION for Michael R. Blaha to Appear Pro Hac Vice. Document filed by Passport International Entertainment, LLC. (jco) (Entered: 11/05/2007)
11/15/2007		CASHIERS OFFICE REMARK on <u>7</u> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 11/01/2007, Receipt Number 631618. (jd) (Entered: 11/15/2007)

11/19/2007	8	MEMO ENDORSED ON NOTICE OF MOTION FOR LEAVE TO APPEAR PRO HAC VICE: ENDORSEMENT: Request GRANTED. Attorney Michael R. Blaha is authorized to appear pro hac vice as counsel for plaintiff in this action before this Court. (Signed by Judge Victor Marrero on 11/19/07) (js) (Entered: 11/20/2007)
11/19/2007		Transmission to Attorney Admissions Clerk. Transmitted re: <u>8</u> Memo Endorsement,, to the Attorney Admissions Clerk for updating of Attorney Information. (js) (Entered: 11/20/2007)

PACER Service Center			
Transaction Receipt			
12/04/2007 15:43:20			
PACER Login:	rb2609	Client Code:	99995.000
Description:	Docket Report	Search Criteria:	1:07-cv-08194-VM
Billable Pages:	2	Cost:	0.16

## **PROOF OF SERVICE**

**STATE OF CALIFORNIA)  
COUNTY OF LOS ANGELES)**

I am employed in the county of Los Angeles State of California. I am over the age of 18 and not a party to the within action; my business address is: 1055 W. 7<sup>th</sup> Street, Suite 2820; Los Angeles, CA 90017.

On December 5, 2007, I served the foregoing document(s) described as:

- DECLARATION OF DAVID M. LEVY IN SUPPORT OF JUDGMENT CREDITORS' MOTION TO AMEND JUDGMENT TO ADD PASSPORT ENTERTAINMENT, LLC AS AN ADDITIONAL JUDGMENT DEBTOR on the interested parties in this action.

[X] By placing [ ] the original [X] true copies thereof enclosed in sealed envelopes addressed as follows:

<p>10 11 Michael R. Blaha, Esq. 12 Law Offices of Michael R. Blaha 13 2530 Wilshire Boulevard, Third Floor 14 Santa Monica, CA 90403</p>	<p>15 Allen Hyman, Esq. 16 Law Offices of Allen Hyman 17 10737 Riverside Drive 18 North Hollywood, CA 91602</p>
<p>19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 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**BY MAIL:** I placed such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

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Executed on December 5, 2007, at Los Angeles, California.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

LYNETTE W. SUKSNGUAN

**Type or Print Name**

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Attorneys for Respondent,  
PASSPORT INTERNATIONAL ENTERTAINMENT, LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ELVIS PRESLEY ENTERPRISES, INC., ) Case No. CV 02-7042 RSWL (RZx)  
et al., )  
Plaintiffs, ) OPPOSITION TO PLAINTIFFS'  
v. ) MOTION TO AMEND JUDGMENT TO ADD  
PASSPORT ENTERTAINMENT, a )  
California Corporation, et al., ) PASSPORT INTERNATIONAL  
Defendants. ) ENTERTAINMENT LLC  
Date: December 13, 2007  
Time: 10:00 a.m.  
Place: Courtroom 21, the  
Honorable U.S. District  
Court Judge Ronald S.W.  
Lew, presiding

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1 I.  
2

3 INTRODUCTION

4 Procedural History of This Docket

5 On February 20, 2007, this Honorable Court entered a  
6 default judgment in the amount of \$2,716,358.50 in favor of  
7 plaintiffs, the present judgment creditors ("JCS") (Docket ("Dkt.")  
8 No. 99, Second Request to Take Judicial Notice ("2RTJN"), Ex. No.  
9 1).

10 The parties to the CV 02-7042 RSWL proceeding are  
11 plaintiffs, the JCS, and four (4) defendants: (1) Passport Video,  
12 "...a business of unknown form and origin," (2) Passport  
13 International Productions Inc., ("PASSPORT-NJ"), (3) Passport  
14 International Productions of California, Inc., ("PASSPORT-CA"), and  
15 (4) Dante J. Pugliese ("PUGLIESE") (November 3, 2006 default by  
clerk, 2RTJN Ex. No. 3).

16 PASSPORT-NJ was the operational company from its  
17 commencement on August 25, 1989 until 1998, and was succeeded by  
18 PASSPORT-CA formed in 1998 upon relocation of the principal  
19 activities of PASSPORT-NJ to California, with PASSPORT-CA being the  
20 successor in interest to the assets of PASSPORT-NJ (Dec. of JP,  
21 Para. 7).

22 On September 9, 2002, plaintiffs sued the four defendants  
23 for infringement of certain property rights in an Elvis Presley  
24 documentary (Dkt. No. 1).

25 On October 23, 2002, the Court granted a preliminary  
26 injunction (Dkt. No. 36). On November 25, 2002, defendants filed a  
27 Notice of Appeal of the preliminary injunction (Dkt. No. 44). On  
28 November 22, 2005, the Court granted plaintiffs motion for summary

1 judgment apparently as to liability (Dkt. No. 74).

2 On April 27, 2006, the Court ordered a Status Conference  
3 for May 15, 2006 (Dkt. No. 77). On May 15, 2006, the Court  
4 continued the Status Conference to June 12, 2006 (Docket No. 78).  
5 On June 12, 2006, the Court ordered Plaintiffs to proceed with the  
6 case (Docket No. 79).

7 By stipulation for entry of an Order of October 25, 2006,  
8 counsel for both plaintiffs and the four defendants (2RTJN, Ex. No.  
9 2), notified the Court that:

10 "...Defendants do not intend to defend  
11 themselves at the damages trial in this matter.  
12 In order to spare the parties and this Court  
the time and expense of preparing for a trial,  
13 in which Defendants will not participate,  
Defendants have agreed to stipulate to entry of  
14 default against Defendants in connection with  
the damages trial in this matter...." (2RTJN,  
Ex. No. 2 at 2:8-15).

15 On October 25, 2006, the Clerk entered default as to the  
16 four defendants "Pursuant to stipulation and order dated  
17 10/25/2006" (Docket No. 84).

18 On December 19, 2006, plaintiffs filed numerous  
19 declarations (Dkt. Nos. 85-94) in support of their motion for  
20 attorneys fees and costs in the amount of \$304,206.83, and a  
21 Request for Default Judgment in the amount of \$2,435,000.00. As  
22 stated, on February 20, 2007, the Court entered a damages judgment  
23 in the amount of \$2,435,000.00 and a fees and cost award in the  
24 amount of \$304,206.83 (Dkt. Nos. 99 and 100).

25 **The UCC Florence Pugliese Perfected Secured Creditor**  
26 **Interest And Foreclosure Sale**

27 While the case was pending, on April 26, 2006, pursuant  
28 to two (2) UCC-1 recorded financing statements (Exs. Nos. 3 and 4

1 to the declaration of Allen Hyman ("Dec. of AH"), Exs. Nos. 3 and 4  
2 to the declaration of Jeanette Pugliese ("Dec. of JP")): (1) "...  
3 August 24, 2001 No. 012460158..." and (2) "...April 3, 2006 06-  
4 70649491...", in the amount of \$3,403,117.74 secured by "...all of  
5 the assets of Passport International Productions of California  
6 Inc., and Passport International Productions Inc....," and after  
7 notices of default (Exs. Nos. 5, 6 and 7 to the Dec., of JP), and  
8 April 18, 2006, Publication of Notice of Foreclosure Sale, (Ex. No  
9 6 to the Dec., of Allen Hyman), Florence Pugliese conducted a  
10 public sale of the "collateral," of the two Passport defendants.

11 No one appeared at the April 26, 2006, public sale (Dec.  
12 of JP; Dec. of AH), and Florence Pugliese who asserted a secured  
13 debt in the amount of \$3,403,117.74 purchased the Passport  
14 collateral.

15 On April 13, 2006, Florence Pugliese with her  
16 granddaughter Jeanette Pugliese had formed Passport International  
17 Entertainment, L.L.C., ("PIE-LLC"). After the April 26, 2006  
18 foreclosure sale, Jeanette Pugliese, on behalf of Florence  
19 Pugliese, through PIE-LLC commenced to exploit the assets purchased  
20 at the April 26, 2006 foreclosure sale through PIE-LLC.

21 Florence Pugliese's August 24, 2001, and Florence  
22 Pugliese's April 3, 2006 ("06-70649491") California Uniform  
23 Commercial Code filings, identifying the PASSPORT-CA collateral as  
24 security for the \$3,403,117.74 debt owed to Florence Pugliese, were  
25 public record and a matter of actual and constructive notice to the  
26 plaintiffs (JCS), (as was the April 26, 2006 Foreclosure):

27 (1) Three months prior to the June 12, 2006 Status  
28 conference (Dkt. No. 79);

1 (2) Six months prior to the October 25, 2006 Stipulation  
2 for entry of default (Dkt. No. 84);

3 (3) Nine months prior to the December 19, 2006 Notice of  
4 Motion and supporting declarations (Dkt. Nos. 85-94) for an entry  
5 of default judgment; and

(4) Eleven months prior to the February 20, 2007 entry of Judgment (Dkt. No. 99).

## The JCS' Assertion of Successor Corporate Liability

9                   The JCS assert (Memo., at 4:16-19 and 4:22-5:3) that PIE-  
10 LLC should be added to the judgment under California Code of Civil  
11 Procedure ("CCP") §187, under the doctrine of "successor corporate  
12 liability" (Notice at 2:26).

13 The JCS assert factually that:

14        "...Florence Pugliese (the 92-year old mother  
15        of Judgment Debtor Dante Pugliese, who another  
16        court has found to have defrauded his  
          creditors) came out of nowhere to 'foreclose'  
          on the assets of the Passport Debtors...."  
          (Memo., at 4:16-19).

23           "This was a fraud. Inadequate consideration,  
24           fake 'written agreements,' and incredibly,  
25           Judgment Debtors now take the position that all  
26           of their assets have just been 'placed' in  
27           Passport LLC (wherever that means).  
28           Essentially, Judgment Debtors argue that all of  
29           their assets are now beyond the reach of any of  
30           their creditors...." (Memo. at 4:22-5:3).

28 Contrary to the JCS' assertion the "Judgment Debtors"

1 take no position and have not in any manner responded to the JCS'  
2 motion. It is Florence Pugliese and her company, PIE-LLC, who are  
3 the respondents who contend that CCP §187 is not applicable.

4 As well, based upon the declaration of Robert Williscroft  
5 (a paralegal of the adverse party, and a person who financed the  
6 adverse underlying litigation in state court), the JCS assert that:

7 1. "...the purported loan agreements were  
8 never produced in the underlying family law  
proceedings (trial was held in August 2005),  
which in turn raise the specter that these  
9 documents were forged...." (See Dec. of RW,  
RTJN Ex. No. 10). (Memo. at 14:15-17).

10 2. "...What we have here is that right before  
11 trial in April 2006 there was a concerted  
attempt to put all of the assets of the  
12 Passport Judgment Debtors beyond the reach of  
the Judgment Creditors ... by attempting to put  
13 all of Passport CA's assets in the hands of a  
92 year old former telephone operator who  
14 allegedly owned 100% of both of these Judgment  
Debtors..." (Memo. at 17:15-20).

15 **The Motion Should (Must) Be Denied**

16 Following the controlling authorities of: (1) Katzir's  
17 Floor and Home Design Inc., v. M-MLS.com, 394 F.3d 1143 (9th Cir.,  
18 2004); (2) Wollersheim v. Church of Scientology International, 69  
19 Cal.App.4th 1012, 1017 (1999); and (3) Knox v. Phoenix Leasing  
20 Incorporated, 29 Cal.App.4th 1357 (1994), and the evidence  
21 presented by Florence Pugliese: (1) in the declaration of Jeanette  
22 Pugliese as to the financial history of Florence Pugliese's loans  
23 and wealth; (2) in the deposition testimony of Florence Pugliese  
24 (summary presented) (deposition transcripts authenticated by the  
25 Dec., of AH); and (3) the December 1, 2005 Amended Statement Of  
26 Decision ("ASOD") of the Honorable Judge Kalin, the JCS have not as  
27 a matter of fact (and could not) as a matter of law meet their  
28

1 burden of proof for the Court to find "successor liability,"  
2 pursuant CCP §187.

3 The motion is legally and factually deficient in that  
4 Wollersheim, supra at 1017 requires that a motion to amend a  
5 judgment to add an additional party under CCP §187 requires that  
6 the moving party establish the factual elements required by "a  
7 preponderance of the evidence." The JCS have not established any  
8 fact by a preponderance of the evidence.

9 The motion is legally deficient in that Katzir's Floor  
10 and Home Design, supra at 1151, specifically holds that successor  
11 liability cannot apply in this circumstances in that PIE-LLC is not  
12 the successor for purposes of CCP §187 in that the assets of  
13 PASSPORT were purchased at foreclosure sale by Florence Pugliese  
14 and PIE-LLC as a matter of law is not the successor entity.

15 The motion is legally deficient in that as the California  
16 Appellate Court held in Knox v. Phoenix, supra:

17 "...According to the California Uniform  
18 Commercial Code, (FP's) execution of a security  
19 agreement describing the property covered gave  
(FP) a security interest in that collateral (§§  
20 9203, subd. (1), 9402, subd. (1)). (FP)  
perfected that security interest when (FP)  
filed a financing statement with the Secretary  
21 of State (§§ 9302, subd. (1), 9401, subd. (c)).  
(FP) thus acquired priority over other  
(PASSPORT) creditors (§§ 9201, 9301, 9312,  
22 subds. (3)-(5)), including the right to take  
possession and sell the collateral if  
(PASSPORT) defaulted (§§ 9503, 9504, subd.  
23 (1)). It being undisputed that (FP) complied  
24 with all of these steps." Knox, supra at 1360.

25 UCC Article 9 also compels a different conclusion (than  
26 that asserted by the JCS):

27 "...(FP) complied with statutory provisions  
28 intended to immunize secured creditors from  
such claims in all but the rarest of cases. As

1                   this is not that sort of case, the equitable  
2                   impulse for restitution must yield to the  
3                   Legislature's command...." Knox, supra at 1368.

4                   To find successor liability, the JCS must establish two  
5                   facts by a preponderance of the evidence: (1) that PIE-LLC is a  
6                   successor entity as defined under CCP §187; and (2) FP purchased  
7                   the assets of PASSPORT for inadequate consideration.

8                   The JCS first assert that FP is a "mere telephone  
9                   operator," "that she came out of nowhere," "that the security loan  
10                  agreements are fraudulent..." and "that the debt owed to FP by  
11                  PASSPORT was fraudulent..."

12                  Yet the declaration of Jeanette Pugliese establishes with  
13                  complete detail, the 1993 to June, 2005 history of Florence  
14                  Pugliese's loans to the two Passport entities, (Dec. of JP, Para.  
15                  14) which details \$4,611,649.22 in loans by Florence Pugliese to  
16                  the Passport Entities during 1993 to June, 2005, supported by  
17                  yearly schedules (even numbered exhibits 1640 to 1644), supported  
18                  by specific documentation for each year of funds received by the  
19                  Passport Entities from or by Florence Pugliese. And attached to  
20                  the declaration of JP (Ex. 1700) is the accounting ledger of  
21                  PASSPORT which verifies the debt to Florence Pugliese as of April,  
22                  2006. The JCS cannot and do not refute this evidence, nor can  
they.

23                  The declaration of Jeanette Pugliese also establishes the  
24                  authentication of the security loan agreements of 1996 and 1998  
25                  (Dec. of JP, Paras. 34-38), and establishes the perfection of the  
26                  Florence Pugliese security interests (Dec. of JP, Paras 37 and 38).  
27                  (Dec. of AH, Exs. 3 and 4).

28                  The totality of the alleged contrary evidence by the JCS

1 is that a paralegal of the law firm, who reviewed over 120 boxes of  
2 documents, in a State Court action, does not recall seeing the two  
3 loan security agreements. Yet the UCC-1 filings are a matter of  
4 public record and the JCS were on constructive notice of their  
5 filings as of April, 2006, after which the JCS proceeded with the  
6 litigation, in October, 2006, and December, 2006, with Florence  
7 Pugliese's UCC filings a matter of public record.

8 The other evidence presented by the JCS is "excerpts"  
9 from the deposition of Florence Pugliese, (presented as if the  
10 questions and answers were sequential, though they were not). As  
11 set forth in the summary of the depositions of Florence Pugliese,  
12 the actual sequential testimony is consistent with the existence of  
13 a \$4 million dollar debt, consistent with the Florence Pugliese  
14 accumulated wealth, consistent with the existence of security  
15 agreements, and Florence Pugliese's right to foreclose.

16 **The Passport Balance Sheet And Income Statement**

17 The JCS reference a 2005 balance sheet where there are  
18 \$6.68 million in assets listed, there are also \$1.47 million in  
19 current liabilities, long term liabilities of \$6.1 million, and a  
20 negative capital of \$1 million, which operates to balance the  
21 books. (Ex. 7, moving parties' RTJN, at 292).

22 PIE-LLC suggests to the court that it is rare indeed that  
23 one determines value by an inspection of the first half of a  
24 balance sheet (that of assets), and does not consider the  
25 liabilities and capital. Particularly when the principal capital  
26 consists of videos which are placed on the books (including the  
27 Elvis Video, cost close to \$2 million), as cost of production which  
28 are amortized.

1                   The income statement for 2005 (Ex. 7, JCS' RTJN at 293),  
2 shows a loss of \$511,000.00 on sales of \$4.7 million. Even were  
3 one to add back in amortization expense the total income would be  
4 \$350,000.00.

5                   Successor liability based upon "inadequate consideration"  
6 appears to arise only in the context of a private non-UCC sale.  
7 CCP §187 does not appear applicable to a public UCC Article 9  
8 foreclosure sale, in which a creditor has perfected its security  
9 interest in compliance with the provisions of the UCC in which  
10 challenges to UCC public sales are provided by state court actions.  
11 Clark v. ENZ, Inc., (1997) 57 Cal.App.4th 852.

12                   **Constitutional Deficiency**

13                   In this regard, Florence Pugliese asserts a more  
14 fundamental defect in the JCS' motion. The UCC Chapter Nine  
15 specifically provides the legal basis where a creditor (in this  
16 regard FP) may perfect a security interest in collateral (assets of  
17 the debtor) as security for FP's loans. CCP §697.520.

18                   Yet more to the point, Florence Pugliese's pre-existing  
19 perfected security interest has priority over a second in time  
20 judgment.

21                   A judgment creditor, in this case the JCS, may perfect a  
22 judgment lien on personal property ("JLPP") by filing a judgment  
23 lien with the Secretary of the State of California. CCP 697.520,  
24 California Practice Guide, "Enforcement of Judgment And Debts"  
25 (Para., 6:230).

26                   California Code of Civil Procedure §697.590(b) however  
27 provides:

28                   "....Except as provided in subdivisions (d) and

(e) priority between a judgment lien on persons property and a conflicting security interest in the same personal property shall be determined according this subdivision. Conflicting interests rank according to priority in time of filing or perfection...." (emphasis added).

Pursuant to CCP §697.590(b), Florence Pugliese's perfected secured interest has priority over the JCS, who would have had to have filed a JLPP with the Secretary of State to even assert a lien on personal property which the JCS have not yet filed. Yet the JCS come to this court seeking to have this court determine priority of a judgment lien they have not perfected, in the JCS' favor, as against a pre-existing perfected lien that is prior in time of Florence Pugliese.

III.

THE NINTH CIRCUIT'S HOLDING IN KATZIR'S FLOOR AND HOME DESIGN INC.,  
V. M-MLS.COM., 394 F.3D 1143 (9TH CIR., 2004), IS CONTRARY TO THE

10                   In Katzir's, supra, the facts were similar to that  
17 presented in this case:

18           1. M-MLS ("M-MLS") was a Canadian corporation wholly  
19 owned by Peter Sommer ("SOMMER"). In 1998 or 1999, M-MLS sold a  
20 "...machine to KATZIR ... for \$87,200.00 in "as is" condition." Id.  
21 at 1146.

22                   2. KATZIR asserted the machine did not work and on July  
23 29, 1999, sued M-MLS in California state court, (later removed to  
24 federal court on the basis of diversity). *Id.* at 1146.

25                   3.     M-MLS "...initially answered and defended..." Id. at  
26                   1146.

4. Confronting financial difficulties, defendant M-MLS

1 "...borrowed \$50,000 from its former accountant FROMSTEIN, and on  
2 August 28, 2000 provided FROMSTEIN a secured interest in all of M-  
3 MLS Inc.'s assets." (emphasis added) Id. at 1147.

4 5. In December, 2000, defendant M-MLS "...discharged  
5 its attorneys and ceased defending the lawsuit." Id. at 1147.

6 6. On March 9, 2001, "...the Court entered default  
7 against M-MLS and on March 9, 2001 the court entered a default  
8 judgement (in favor of KATZIR) of \$1,638,884...." Id. at 1147.

9 7. M-MLS failed to make payments to its creditor  
10 FROMSTEIN and in June, 2001, "...FROMSTEIN initiated private  
11 involuntary receivership proceedings under Canadian law (SALAR  
12 RECEIVERS being the receiver)." Id. at 1147.

13 8. On July 9, 2001, SALAR RECEIVERS "sold all of the  
14 assets of M-MLS to Scamper Enterprises Inc., a separate corporation  
15 wholly owned by SOMMER's (the initial 100% owner of M-MLS) wife for  
16 \$25,000.00." Id. at 1147.

17 9. "...KATZIR was given notice and was aware of the  
18 receivership proceedings in Canada but did not challenge the  
19 valuation of the sale to Scamper of all of M-MLS assets...." Id. at  
20 1147.

21 10. "...Around the time that M-MLS discharged its  
22 attorney in December, 2000, SOMMER (the owner of M-MLS) formed  
23 another Canadian corporation called M-MLS.com an online brokerage  
24 company ..." After SCAMPER (owned by SOMMER's wife) bought the  
25 asset of M-MLS Inc., Scamper "...allowed M-MLS.com to use the M-MLS  
26 website Scamper had acquired as part of the receiver's sale." Id.  
27 at 1147. The same circumstance is presented by the JCS in  
28 asserting that Florence Pugliese's use of intellectual property

1 assets she purchased establishes successor liability, which is  
2 without basis.

3           11. In May, 2000, plaintiff KATZIR "...moved to modify  
4 the federal court default judgment to reflect the true names of the  
5 debtor by adding Sommer as an individual and M-MLS.com." Id. at  
6 1147.

7           12. The district court "...granted the motion on the  
8 bases that Sommer was the alter ego of M-MLS. INC., and (that) ...  
9 M-MLS.com was the successor corporation of (initial defendant of)  
10 MLS, Inc...." Id. at 1147.

11           Though the Ninth Circuit in M-MLS, supra reversed the  
12 finding of alter ego, M-MLS, supra at 1148-1150, PIE-LLC  
13 respectfully directs this Court's attention to the only issue  
14 presented in by the JCS that of "successor corporate liability,"  
15 (found at M-MLS, supra at 1150-1151). In evaluating successor  
16 corporate liability under the circumstances before it, the Ninth  
17 Circuit found:

18           1. The Circuit acknowledged the doctrine of "successor  
19 corporate liability," identifying McClellan v. Northridge park  
20 Townhome Owners Assoc., supra (identified by JCS). Id. at 1150.

21           2. The Circuit found in a review of California  
22 appellate authorities that "...although the California Supreme  
23 Court in Ray listed the two additional factors in the disjunctive,  
24 all of the cases cited by the Supreme Court involved inadequate  
25 consideration. Inadequate consideration is an 'essential  
26 ingredient' to a finding that one entity is a mere continuation of  
27 the other. (Citing to) Maloney v. Am. Pharm Co. 207 Cal.App.3d 282,  
28 255 Cal.Rptr. 1, 4 (1988)." Id. at 1150.

1           3. The Circuit found that the district court  
2 erroneously found successor liability (based upon similar theories  
3 as the JCS contend here) in that: "...The district court relied on  
4 the transfer of the website and intellectual property to Scamper to  
5 support its finding of inadequate consideration." Id. at 1150.

6           4. The circumstances before this court was that of a  
7 foreclosure by secured creditor Florence Pugliese and a transfer of  
8 assets from PASSPORT-CA to Florence Pugliese by way of an April 26,  
9 2006 foreclosure sale.

10           5. In M-MLS, supra, the Ninth Circuit, in finding the  
11 district court's ruling was erroneous as to successor liability,  
12 first found:

13           (a) "...First the transfer was to Scamper  
14 (though owned by the wife of the owner of M-  
MLS), an intervening corporation, not to M-  
MLS.com. See Maloney, 255 Cal. Reporter at 4 ...  
15           (A) mere continuation contemplates a direct  
16 sale of asset from the predecessor corporation  
17 to the successor corporation." M-MLS, supra at  
18 1151.

19           (b) The Ninth Circuit first finds that there can be no  
20 successor liability in that M-MLS.com is not in fact the successor  
21 for purposes of CCP §187 to M-MLS, in that the assets were  
22 purchased at a foreclosure sale by SCAMPER.

23           (c) In this regard, the ELVIS plaintiffs, the JCS,  
24 though attempting to belittle and cast doubt on Florence Pugliese's  
25 ownership of PASSPORT-CA, attempting to cast doubt on Florence  
26 Pugliese's wealth accumulation as "a mere telephone operator...,"  
27 attempting to cast doubt on the loans of Florence Pugliese to the  
28 PASSPORT entities, "...the notes were a fraud...," do not in any  
manner seek successor liability as to Florence Pugliese, though the

1 ELVIS plaintiffs and the JCS assert that all of Florence Pugliese's  
2 debts, secured interests, and other rights are suspect.

3 (d) Florence Pugliese was the successor owner of the  
4 PASSPORT-CA assets, not PIE-LLC.

5 (e) The ELVIS plaintiffs seek "successor liability"  
6 against a non-successor, M-MLS, supra at 1151, which the Ninth  
7 Circuit finds is not legally viable.

8 (f) The Ninth Circuit also held:

9 "...Second even if Scamper's subsequent grant  
10 of permissive use of the website to M-MLS.com  
11 could somehow make M-MLS.com the successor  
corporation of M-MLS Inc., (a proposition of  
highly dubious merit), Katzir's Floor has  
failed to establish that the transfer to  
12 Scamper involved inadequate consideration." M-  
MLS, supra at 1151.

13 "...See *Id.* at 3.n.3 (holding that the party  
14 asserting the theory of successor liability  
bears the burden of establishing inadequate  
15 consideration)..." M-MLS, supra at 1151.

16 (g) "...No evidence as of its value was introduced, and  
17 there are no facts in the record to support the district court's  
18 conclusions that M-MLS's Inc. trainer of its website and  
19 intellectual property to Scamper satisfied the requirement that the  
20 trainer involved inadequate consideration." M-MLS, supra at 1151.

21 Sale Of Assets Of PASSPORT-CA

22 The assets of PASSPORT-CA, the collateral was purchased  
23 by Florence Pugliese for the value of her debt that being \$3.4  
24 million.

25 Further Basis Consistent With Ninth Circuit Decision

26 In M-MLS, supra

27 PIE-LLC asserts that there is a further defect to the  
28 JCS' attempt to assert successor liability, consistent with the

1 Ninth Circuit decision in M-MLS, supra. In M-MLS, supra,  
2 FROMSTEIN, the accountant to M-MLS, loaned M-MLS \$50,000.00 in  
3 which M-MLS provided FROMSTEIN a security interest in the assets of  
4 M-MLS. FROMSTEIN then foreclosed on the assets which were sold at  
5 a receiver's sale, providing FROMSTEIN some return, \$25,000.00 on  
6 his secured loan.

7 In the circumstance presented in this matter, it is  
8 Florence Pugliese who has loaned PASSPORT-CA \$3.4 million, who  
9 forecloses and purchases the assets. The JCS would have the court  
10 through finding successor liability nullify Florence Pugliese's  
11 debt, her secured creditor position, her perfection of her secured  
12 creditor position, taking a property right from Florence Pugliese  
13 through a CCP §187 procedure, not only without substantial  
14 evidence, not only contrary to the great weight of the evidence in  
15 Florence Pugliese' favor, but contrary to the specific remedies  
16 provided by Commercial Code Article 9, if Florence Pugliese's  
17 secured and perfected interest and sale are to be challenged.

18 **The JCS' Authorities Are Not Supportive**

19 The JCS' "Appendix of California Authorities," two (2)  
20 citations, are not supportive, the first being McClellan v.  
21 Northridge Park Townhome Owners Association, Inc., 89 Cal.App.4th  
22 746 (2001), in which the Court found:

23 1. On October 10, 1966, Peppertree Condominium  
24 Association ("PEPPERTREE"), entered into a contract with plaintiff  
25 MCCLELLAN "...to perform earthquake repair work on the ...  
26 PEPPERTREE ... 76 unit condominium complex..." Id. at 749.

27 2. After the work was completed, PEPPERTREE did not  
28 pay. Id. at 749.

1                   3. MCCLELLAN commenced arbitration proceedings, where  
2 the arbitrator "...awarded MCCLELLAN a default arbitration award  
3 ... which ... on June 15, 1998...", the Superior Court "confirmed  
4 in the amount of \$171,685.56..." Id. at 749.

5                   4. On June 2, 1998, the board of directors of  
6 PEPPERTREE filed "...articles of incorporation for Northridge Park  
7 Townhome Owners Association...", ("NORTHRIDGE"), and "...on July 2,  
8 1998, PEPPERTREE filed a voluntary petition under chapter 7 for  
9 Bankruptcy." Id. at 750.

10                 5. On April 14, 1999, the Bankruptcy Court dismissed  
11 PEPPERTREE's bankruptcy petition. Id. at 750.

12                 6. MCCLELLAN filed a motion to "...amend the judgment  
13 to add Northridge Park as a judgment debtor...." asserting that  
14 Northridge Park was "...merely a continuing of PEPPERTREE ...  
15 created to hinder delay and defraud PEPPERTREE's creditors." Id. at  
16 751.

17                 7. The Court found that the PEPPERTREE's CC&Rs provided  
18 that "...the declaration run with the land for fifty years ...  
19 unless revoked by ... not less than three-fourths (3/4) of the  
20 condominiums ... There is no evidence that PEPPERTREE's CC&R's had  
21 been duly revoked...." Id. at 755.

22                 8. The Court also found that there was no transfer of  
23 rights in the individual units to the new association, Id. at 756,  
24 and that "...Northridge Park is essentially nothing more than the  
25 continuation of PEPPERTREE under a different name...." Id. at 755.

26                 Yet here, there is no evidence of a lack of valid  
27 transfer.

28                 The second authority cited by the JCS is Motores De

1 Mexicalli S.A. v. Superior Court of Los Angeles, 51 Cal.2d 172  
2 (1958).

3 Yet in Motores, supra, the Appellate Court denied the  
4 petition, finding that the persons which the judgement creditor  
5 requested to be added "Resnick and the Cowans would constitute a  
6 denial of due process of law." Id. at 176. The Court held that  
7 "...To summarily add Resnick and the Cowans to the judgment  
8 heretofore running only against Erbel, Inc., without allowing them  
9 to litigate any question beyond their relationship to the alleged  
10 alter ego corporation would patently violate their constitutional  
11 safeguard...." Id. at 176.

12 The JCS final authority is Stanford Hotel v. Schwind  
13 Company 180 Cal. 348 (1919), which is not supportive in that it  
14 holds that under certain circumstances a court in equity "...will  
15 regard the new corporation as a continuation of the former  
16 corporation and will hold it liable for the debts of the former  
17 corporation..." Id. at 354.

18 **III.**

19 **CONCLUSION**

20 The preponderance of the evidence (summary of the  
21 deposition of Florence Pugliese, (age 89) Vol. 2, and findings in  
22 the ASOD, and the Dec. of JP), establishes that Florence Pugliese  
23 accumulated considerable wealth, and during 1993 to June, 2005,  
24 loaned that wealth in the amount of \$4.5 million to the Passport  
25 entities. The JCS have no evidence to the contrary.

26 The preponderance of the evidence (Dec., of JP and  
27 deposition of Florence Pugliese, (age of 89)) establish the  
28 existence of security loan agreements. And the JCS have no

1 evidence to the contrary, other than a paralegal who claims not to  
2 have observed them in a review of 125 boxes of documents, in a  
3 prior case.

4 The filing of the UCC-1 is prima facie evidence of the  
5 existing secured debt of Florence Pugliese, which the JCS had  
6 constructive notice, and there is no evidence to the contrary.

7 PIE-LLC is not the successor entity of Passport, M-  
8 MLS.com, supra at 1151, Florence Pugliese was the successor in  
9 interest to the assets of Passport.

10 The preponderance of the evidence is that the \$3.4  
11 million is sufficient consideration, and the JCS have not indicated  
12 to the contrary. More to the point is that the JCS' motion would  
13 operate to defeat the security interest of FP, which can only be  
14 attached by a state court proceeding asserting improper sale under  
15 UCC Chapter 9.

16 The JCS by comparing websites of the former Passport and  
17 the PIE-LLC website have established nothing more than the use of  
18 the assets purchased by Florence Pugliese.

19 Pursuant to CCP §697.520, Florence Pugliese's rights are  
20 superior to that of the JCS, and the JCS have not established by a  
21 preponderance of the evidence to the contrary. The motion should  
22 be denied.

23 Respectfully Submitted,  
24  
25  
26 DATED: November 29, 2007 By: /s/ Allen Hyman, Esq.  
27  
28 Allen Hyman  
Attorneys for Respondent,  
PASSPORT INTERNATIONAL  
ENTERTAINMENT, LLC

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*Declaration  
of Jeanette  
Pugliese*

10  
11 UNITED STATES DISTRICT COURT  
12  
13 CENTRAL DISTRICT OF CALIFORNIA

14  
15 ELVIS PRESLEY ENTERPRISES, INC., ) Case No. CV 02-7042 RSWL (RZX)  
16 et al., )  
17 Plaintiffs, ) DECLARATION OF JEANETTE  
18 v. ) PUGLIESE IN OPPOSITION TO  
19 ) MOTION TO ADD PASSPORT  
20 ) INTERNATIONAL ENTERTAINMENT,  
21 ) LLC TO THE JUDGMENT  
22 )  
23 ) Date: December 13, 2007  
24 ) Time: 10:00 a.m.  
25 ) Defendants. ) Place: Courtroom 21, the  
26 ) ) Honorable U.S. District  
27 ) ) Court Judge Ronald S.W.  
28 ) ) Lew, presiding  
-----)

19  
20 I, Jeanette Pugliese, declare as follows:

21 1. I have personal knowledge of the facts set forth  
22 in this declaration, and I could and would testify as to these  
23 facts if called upon to do so.

24 2. I am the daughter of Dante Pugliese, and the  
25 granddaughter of Florence Pugliese.

26 3. I was a defendant in the California State Court  
27 lawsuit of Michelle Noel Pugliese v. Florence Pugliese, Case No. BD  
28 367868.

1           4. In 1986, I received my accounting degree from Seton  
2 Hall University.

3           5. In 1994, I became the controller of Passport  
4 International Productions, Inc., a New Jersey corporation. Since  
5 its inception in 1998, I was the controller of Passport  
6 International Productions of California, Inc., until the cessation  
7 of its operations in 2006.

8           6. I am familiar with the financial books and records  
9 of Passport International Productions, Inc., a New Jersey  
10 corporation, and Passport International Productions of California,  
11 Inc., a California corporation.

12           7. Up to 1998, during the operation of Passport  
13 International Productions, Inc., and during the operation of  
14 Passport International Productions of California, Inc., a  
15 California corporation, I was the principal person in charge of  
16 establishing and maintaining the accounting and business records of  
17 these two companies.

18           **Funds Loaned And Invested By Florence Pugliese**

19           8. The business records of both Passport of New Jersey  
20 and Passport of California, consist of computer accounting files,  
21 comprised of entries regularly made at the time of the transaction,  
22 in the ordinary course of business. As to both companies, receipts  
23 of either income or funds from any source were inputted into the  
24 Passport accounting records on the day the funds were received, and  
25 records of expenditures by the Passport entities were inputted into  
the Passport accounting database on the day funds were expended.

27           9. I was the supervisor in charge of maintaining the  
28 accounting records at Passport of New Jersey and Passport of

1 California.

2           10. For the California State Court trial in Michele  
3 Pugliese vs. Florence Pugliese, Case No. BD367868 I compiled yearly  
4 summaries from the Passport of New Jersey and the Passport of  
5 California accounting data bases, identifying funds loaned by  
6 Florence Pugliese to both Passport of New Jersey and Passport of  
7 California.

8           11. In the California State case of Michele Pugliese vs.  
9 Florence Pugliese, I prepared schedules of Florence Pugliese loans  
10 to the Passport entities as Exhibit Nos., 1639 to Exhibit No. 1664.

11           12. I created the exhibits in the California State case  
12 and compiled the documentation which supported the schedules of  
13 funds loaned by Florence Pugliese to the Passport companies. I  
14 have created exhibits I derived from the exhibits in the California  
15 State case and included these schedules with the same documentation  
16 I presented in the State Court case, which I attach to this  
17 declaration. In this declaration I use the same exhibit numbers  
18 that I used in the California State Case.

19           13. I attach to this declaration as Exhibit No. 1639  
20 (Bates 20), a summary listing, derived from the accounting files of  
21 Passport of New Jersey and Passport of California, of the loans  
22 made by Florence Pugliese to the two Passport companies by year  
23 during the period 1993 to June, 2005. The sum of the total amount  
24 listed by year is \$4,611,649.22.

25           14. I set forth below the same summary that is found on  
26 Exhibit No. 1639 (Bates 20), which identifies the loans of Florence  
27 Pugliese to Passport for each year, 1993 to June, 2005. I also  
28 identify below the separate yearly totals of funds loaned by

1 Florence Pugliese to either of the Passport entities, with yearly  
 2 totals of the loans and a listing of the specific loans identified  
 3 on separate yearly exhibits.

4 SUMMARY OF CASH RECEIPTS JOURNAL CONTRIBUTIONS AND LOANS  
 5 BY FLORENCE PUGLIESE TO PASSPORT-NJ AND PASSPORT-CA

<u>PASSPORT-NJ</u>		
<u>Exhibit #</u>	<u>Year</u>	<u>Florence Pugliese</u>
1640 (Bates 21)	1993	61,729.46
1642 (Bates 29-30)	1994	290,127.52
1644 (Bates 60-61)	1995	127,617.86
1646 (Bates 84)	1996	356,223.68
1648 (Bates 105)	1997	1,496,483.86
<u>PASSPORT-CA</u>		
1650 (Bates 130-131)	1998	212,364.43
1652 (Bates 168-169)	1999	177,964.37
1654 (Bates 188-189)	2000	677,809.75
1656 (Bates 221)	2001	83,009.95
1658 (Bates 235-236)	2002	357,936.59
1660 (Bates 252)	2003	114,336.58
1662 (Bates 273)	2004	498,656.27
1664 (Bates 301-302)	2005	157,388.90
<hr/> TOTAL:		<hr/> 4,611,649.22

22       15. During the period 1993 to 2005, Passport provided  
 23 some funds to Florence Pugliese which offset certain of the loans  
 24 provided by Florence Pugliese to Passport, with the total owing to  
 25 Florence Pugliese as of April, 2006, of \$3,403,117.14.

26       16. As Florence Pugliese's granddaughter and accountant  
 27 since 1989, I have assisted Florence Pugliese with her financial  
 28 affairs on a regular basis. I am aware that the source of Florence

1 Pugliese's funds have come from sale of real property, from sale of  
2 stocks that she has had in her name for many years, and income from  
3 catalogs of music.

4           17. As identified above, and below I attach as Exhibit  
5 Nos. 1640, 1642, 1644, 1646, 1648, 1650, 1652, 1654, 1656, 1658,  
6 1660, 1662, and 1664, summary accountings for each year 1993  
7 through June, 2005 (1640 being 1993, and 1664 being for January to  
8 June, 2005), a schedule from the accounting files of Passport New  
9 Jersey and Passport California, which identify the loans of  
10 Florence Pugliese for each year to Passport, indicating the dates  
11 of each Florence Pugliese loan for each year.

12           18. For example, Ex. No. 1640 (Bates 21) identifies  
13 loans which correlate to the amount stated for year 1993 on Ex.  
14 1639 and the total on Ex. No. 1642 (Bates 29 and 30) is the amount  
15 stated for year 1994 on Ex. No. 1639 (Bates 20).

16           19. After each yearly summary, Exhibit 1642 (Bates 29  
17 and 30), are backup documentation (Exhibit 1643; Bates 22-29)  
18 identifying the Florence Pugliese loans to Passport of New Jersey  
19 and Passport of California.

20           20. Similarly Ex. No. 1643 (Bates 31-59) is the  
21 documentation which supports the schedule for 1994 (Ex. 1642).

22           21. For each year 1995 to 2005, I present a yearly  
23 listing of the amounts provided by Florence Pugliese, identifying  
24 the date of each loan and the Bates numbers of the backup  
25 documentation, with the back up documentation provided in the  
26 following exhibit.

27           **General Ledger-Loan Account Florence Pugliese**

28           22. Attached to this declaration, as Exhibit No. 1700

1 (Bates 323-325), is a copy of the general ledger of Passport  
2 California Account 18900 for the period January 1, 2005 to December  
3 31, 2006, Account 18900, the account being "Due To From Flo  
4 Pugliese." Account Number 18900 identifies the current balance  
5 owned by Passport California to Florence Pugliese at any given  
6 time, given Florence Pugliese's loans to Passport and Passport's  
7 partial repayments to Florence Pugliese.

8 23. Ex. No. 1700 (Bates 323-325), Account No. 18900, is  
9 from the business records of Passport, maintained in the ordinary  
10 course of business, and includes entries made at the time  
11 indicated.

12 24. As of May, 1, 2006, the amount owed by Passport to  
13 Florence Pugliese, as identified in Exhibit No. 1700 (Bates 324),  
14 was \$3,403,117.74.

15 **Power of Attorney for Florence Pugliese**

16 25. On December 5, 1997, I was appointed with a power of  
17 attorney of my grandmother Florence Pugliese, which power of  
18 attorney has remained in effect from December 5, 1997, to the  
19 present day. I attach to this declaration as Exhibit No. 3006, the  
20 December 5, 1997, Appointment of Power of Attorney by Florence  
21 Pugliese.

22 **Date of Birth of Florence Pugliese**

23 26. I attach to this declaration as Exhibit No. 8, a  
24 copy of my grandmother Florence Pugliese's Passport, which  
25 indicates her date of birth as October 21, 1914.

26 **Health of Florence Pugliese**

27 27. Florence Pugliese suffers from cardiovascular  
28 disease, she has difficult breathing, and is easily exhausted, she

1 experiences dizziness, and often has chest pain. Over the past  
2 year, her general health condition appears to be deteriorating.

3 Four Million Obtained By Florence Pugliese From

4 Sale of Florence Pugliese's 1982 Purchase of Land

5 Invested In Passport

6 28. I have investigated the financial documents of  
7 Florence Pugliese.

8 29. I attach to this declaration as Exhibit No. 1701, a  
9 copy of the first and second pages of a July 27, 1982 Florence  
10 Pugliese Purchase Agreement, where Florence Pugliese purchased the  
11 entirety of the 100 shares of A.P.Z., Inc., a New Jersey  
12 Corporation, (Ex. No. 1703, page 2).

13 30. I attach to this declaration as Exhibit No. 1702, a  
14 copy of the Rider to the July 27, 1982 Florence Pugliese purchase  
15 of A.P.Z., Inc., in which Rider, at paragraph No. 5 (page 1 of Ex.  
16 No. 1702) indicates that A.P.Z.'s assets contain "at least 70 acres  
17 of land...."

18 31. My review of Florence Pugliese's financial records  
19 indicates that, in the mid to late 1980's Florence Pugliese sold  
20 part of the A.P.Z. property for \$1,000,000.00, and that during  
21 1994-1996, I participated in Florence Pugliese selling the balance  
22 of the A.P.Z. property for \$2.85 million.

23 32. I attach to this declaration as Exhibit No. 1703, a  
24 copy of an April 15, 1996 closing statement, for the sale of the  
25 remaining A.P.Z. land, which indicates receipt by Florence Pugliese  
26 of \$2,850,000.00 for the balance of the sale.

27 33. During 1994-1996, I monitored my grandmother's  
28 Florence Pugliese's account during which time my grandmother

1 received \$2.8 million dollars from the sale of her real estate in  
2 New Jersey.

3           34. In that as of 1996 Florence Pugliese was commencing  
4 to loan large amounts to Passport NJ, Florence Pugliese on the  
5 advice of her grandson, my brother who is an attorney, Florence  
6 Pugliese entered into a security loan agreement dated November 20,  
7 1996, which is attached to my declaration as Exhibit No. 15 (Bates  
8 10 and 11).

9           35. I saw the security loan agreement (Exhibit No. 1) in  
10 November, 1996 when Florence Pugliese signed the agreement.

11           36. Also given the large amounts being loaned by  
12 Florence Pugliese, after the 1998 transfer of operations from  
13 Passport New Jersey to Passport California, on July, 8, 1998,  
14 Florence Pugliese entered into a security loan agreement with  
15 Passport of California (Ex. No. 2 (Bates 12-13)). I saw the  
16 Florence Pugliese July, 1998, security loan agreement (Exhibit No.  
17 2), when Florence Pugliese signed the agreement with Passport of  
18 California in July 1998.

19           37. Because the large sums loaned by Florence Pugliese,  
20 Florence Pugliese commenced filing a UCC financing statement. I  
21 attach to this declaration as Exhibit No. 3 an August 24, 2001 UCC  
22 Financing Statement, 0124160158, as to Passport International  
23 Productions Inc., and Passport International Productions of  
24 California, Inc., filed on behalf of Florence Pugliese.

25           38. I attach to this declaration as Exhibit No. 4 an  
26 April 3, 2006 "Added" "Continuation" UCC Financing Statement,  
27 06-70649491, which was filed in favor of Florence Pugliese.

28           Events In 2005 and 2006

1                   39. In 2005 and 2006, Passport had been losing money  
2 each year and Florence Pugliese was continuing to loan Passport  
3 funds, liquidating her stock assets, borrowing on her home to fund  
4 Passport. As of 2006 Florence Pugliese's loans to Passport was  
5 over \$3.4 million dollars with no likelihood that Passport could  
6 repay any of the funds to Florence Pugliese.

7           40. In order to attempt to salvage whatever value of her  
8 investments in Passport, whichever \$1 million had been capitalized  
9 and over \$3.4 million was provided under loan agreements, Florence  
10 Pugliese's grandson, an attorney, suggested that Florence Pugliese  
11 foreclose and attempt to sell Passport and obtain what funds she  
12 could to plan the remaining years of her life, provide for her for  
13 her last years of her life, and pass on to her grandchildren and  
14 great grandchildren any assets remaining.

15                   41. I attach to my declaration as Exhibit No. 5 a March  
16 31, 2006 letter of Florence Pugliese delivered to Passport of New  
17 Jersey and Passport of California on March 31, 2006 requesting  
18 repayment of Florence Pugliese's loan.

19                   42. I attach to my declaration as Exhibit No. 6 an April  
20 14, 2006 letter of Florence Pugliese delivered to Passport of New  
21 Jersey and Passport of California on April 14, 2006, indicating  
22 intention to foreclose.

23                   43. I attach to my declaration as Exhibit No. 7 an April  
24 24, 2006 letter of Florence Pugliese delivered to Passport of New  
25 Jersey and Passport of California on April 24, 2006, indicating  
26 foreclosure and sale of assets of Passport.

Loans Owed To Florence Pugliese

44. As of April 24, 2006, I was aware that Passport of

1 New Jersey and Passport of California was indebted to Florence  
2 Pugliese under loan agreements by the amount of \$3,403,117.14  
3 (Exhibit 1700), which loans had been provided by Florence Pugliese  
4 to Passport of New Jersey and Passport of California over the years  
5 from at least 1995 to April 24, 2006.

6 **Foreclosure Sale**

7 45. On April 26, 2006, I attended a Foreclosure Sale  
8 where the attorney for Florence Pugliese purchased the entire  
9 assets of Passport of New Jersey and Passport of California.

10 46. In that no entity or party appeared at the  
11 foreclosure sale, Florence Pugliese undertook to purchase the  
12 assets of Passport, and I, on her behalf, commenced to utilize the  
13 assets in a company I established for Florence Pugliese, Passport  
14 International Entertainment, LLC.

15 I declare under penalty of perjury under the laws of the  
16 United States that the foregoing is true and correct and that this  
17 declaration was executed on November 29, 2007, in North Hollywood,  
18 California.

19  
20 /s/ Jeanette Pugliese  
21 Jeanette Pugliese  
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